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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

YASHWANT BALGIRI GIRI,

Plaintiff and Appellant,

v.

MEDICAL BOARD OF CALIFORNIA,

Defendant and Respondent.

C090755

(Super. Ct. No.
34201900257250CUMCGDS)

In 2014, the Medical Board of California (Board) revoked plaintiff Yashwant Balgiri Giri's medical license because Giri was required to register as a sex offender. In 2019, Giri sued the Board, arguing that he was improperly deprived of an opportunity to seek reinstatement of his medical license. The trial court sustained the Board's demurrer to Giri's complaint without leave to amend, ruling that Giri failed to exhaust administrative remedies before suing the Board.

On appeal, Giri argues the trial court erred, as the available administrative remedy was inadequate and futile, and therefore Giri did not have to pursue it before filing suit. Alternatively, Giri argues he should be permitted to amend his complaint.

Disagreeing, we affirm.

I. BACKGROUND

In 2004, Giri obtained a medical license from the Board.

In 2013, Giri pled *nolo contendere* to multiple sex crimes and was required to register as a sex offender pursuant to Penal Code section 290.¹ This prompted the Board, to file an “accusation” against Giri, invoking section 2232, subdivision (a) of the Business and Professions Code,² which provides that, with some exceptions, the Board “shall automatically revoke the license of any person who . . . has been required to register as a sex offender pursuant to the provisions of [s]ection 290 of the Penal Code.”

In March 2014, Giri and the Board stipulated to the revocation of Giri’s license and agreed that if Giri were to “ever file[] an application for relicensure or reinstatement in the State of California, the . . . Board [would] treat it as a petition for reinstatement,” and Giri would have to “comply with all laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.”

In 2018, Giri’s plea was vacated, and the criminal charges against him were dismissed. But Giri’s registration requirement remained in force.

In May 2019, Giri filed in the trial court a complaint for declaratory relief against the Board, stating three causes of action, all arising out of his “sole contention . . . that . . . § 2232 as applied to him, preclude[d] him from any opportunity to petition the . . . Board

¹ Every person convicted of a crime identified in Penal Code section 290, subdivision (c) is required to register with the relevant branch of local law enforcement while that person resides or works in California. (*Id.*, subd. (b).)

² Further undesignated statutory references are to the Business and Professions Code.

or the superior court for a hearing on whether or not he should have his medical license reinstated.”

The Board demurred on four grounds, including that, consistent with Giri’s failure to “allege anywhere in his [c]omplaint whether he . . . actually filed a [p]etition for [r]einstatement of his license pursuant to . . . 2307,”³ Giri had “failed to fully exhaust administrative remedies prior to filing [his] action.”⁴ Acknowledging that section 2232 mandates revocation of a license belonging to someone “who has been required to register as a sexual offender,” the Board maintained that the law “[did] not bar [Giri] from applying for reinstatement of his license under . . . section 2307.”

In opposition to the demurrer, Giri argued that his civil action “[fell] within two of the exceptions to the doctrine of exhaustion of administrative remedies.” First, the available remedy was inadequate, as “any purported hearing before the Board . . . would be irrelevant because ultimately [Giri’s] [l]icense must be revoked pursuant to . . . § 2232[, subdivision](a).” Second, pursuit of the available remedy was futile, because section 2232, subdivision (a) “ma[de] it . . . certain” that Giri could not “have his [l]icense reinstated by the Board.” Thus, Giri explained, “petitioning the Board for reinstatement . . . would be utterly meaningless and hollow.”

The trial court sustained the Board’s demurrer, ruling that Giri “ha[d] an available administrative remedy,” but did not allege “that he exhausted this remedy, and . . . allege[d] no facts that demonstrate[d] a valid excuse for his failure.” The trial court rejected Giri’s argument that his case fell within an exception to the administrative exhaustion requirement, concluding it was “not a foregone conclusion that the

³ Section 2307, subdivision (a) provides that a person whose license “has been . . . revoked . . . , may petition the [B]oard for reinstatement.”

⁴ The Board also demurred on grounds that the case was not ripe for adjudication; Giri lacked standing to bring the action; and the trial court could not provide a remedy.

Board [would] deny any petition for reinstatement that [Giri] might file.”⁵

Acknowledging that Giri requested leave to amend, the trial court explained that Giri did not “specify how he would cure the deficiencies” in his complaint, but would have a chance to address the issue at a hearing on the demurrer.

Giri did not request a hearing, so the trial court affirmed its tentative ruling and dismissed Giri’s complaint without leave to amend.

Giri timely appealed.

II. DISCUSSION

A. Standard of Review

“The function of a demurrer is to test the sufficiency of the complaint by raising questions of law. We give the complaint a reasonable interpretation and read it as a whole with all parts considered in their context. A general demurrer admits the truth of all material factual allegations. We are not concerned with the plaintiff’s ability to prove the allegations or with any possible difficulties in making such proof. We are not bound by the construction placed by the trial court on the pleadings; instead, we make our own independent judgment. [Citation.]

“Where the trial court sustains the demurrer without leave to amend, we must decide whether there is a reasonable possibility the plaintiff can cure the defect with an amendment. If we find that an amendment could cure the defect, we must find the court abused its discretion and reverse. If not, the court has not abused its discretion. The plaintiff bears the burden of proving an amendment would cure the defect. [Citation.]” (*Scholes v. Lambirth Trucking Co.* (2017) 10 Cal.App.5th 590, 595.)

⁵ The trial court also sustained the demurrer on ripeness grounds.

B. *Legal Backdrop*

1. *The Board's Exercise of Its Public Protection Responsibilities*

The Board is responsible for ensuring that medical doctors “ ‘possess the requisite skills and qualifications necessary to provide safe and effective services to the public.’ ” (*Frankel v. Board of Dental Examiners* (1996) 46 Cal.App.4th 534, 543 (*Frankel*).)

“ ‘This broad purpose is effectuated mainly by the issuance, renewal or revocation of a license to practice.’ ” (*Ibid.*; see *Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 114.)

“A proceeding to determine whether a [medical doctor’s] license should be ‘revoked, suspended, limited or conditioned [is] initiated by filing an accusation.’ (Gov. Code, § 11503.) The proceeding is civil in nature, intended to protect the public rather than punish the licensee.” (*Frankel, supra*, 46 Cal.App.4th at p. 543.)

“Although no statute expressly authorizes the settlement of a dispute that has given rise to a disciplinary accusation, the statutory scheme has been interpreted to give administrative agencies such as the Board ‘the implied power to settle licensing disputes’ and to incorporate the settlement into a formal Board decision. [Citation.] Provided they do not include conditions that violate public policy, settlements are administratively efficient, further the purpose for which the Board was created, and are consistent with the general policy of favoring compromises of contested rights.” (*Frankel, supra*, 46 Cal.App.4th at p. 544.)

2. *Reinstatement Under Sections 2232 and 2307*

Section 2232, subdivision (d)(1) permits a person who has been required to register as sex offender and whose medical license was revoked “prior to January 1, 2005,” to petition the superior court to determine whether they no longer pose a possible risk to patients. If the court concludes the person no longer poses a possible risk to patients, the court must order the board to reinstate the medical license. (*Id.*, subd. (d)(2).)

As noted earlier, section 2307, subdivision (a) permits a person whose license “has been . . . revoked” for any reason to “petition the [B]oard for reinstatement.” Section 2307, subdivision (b) delineates the minimum time periods a person seeking reinstatement must wait, depending on different circumstances.⁶

Section 2307, subdivision (e) provides: “The panel of the board or [an] administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner’s activities during the time the certificate was in good standing, and the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.”

3. *Administrative Exhaustion Requirement & Its Exceptions*

“A party must exhaust its administrative remedies before it seeks judicial review. An administrative remedy is exhausted only upon termination of all available administrative review procedures. [Citations.] ‘ “The exhaustion doctrine is principally grounded on concerns favoring administrative autonomy (i.e., courts should not interfere with an agency determination until the agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary).” ’ ” (*AIDS Healthcare Foundation v. State Dept. of Health Care Services* (2015) 241 Cal.App.4th 1327, 1337 (*AIDS Healthcare*).)

“Courts recognize several exceptions to the exhaustion of administrative remedies doctrine, including where seeking the administrative remedy is futile or the remedy is inadequate.” (*AIDS Healthcare, supra*, 241 Cal.App.4th at pp. 1349-1350.) First, “[t]he futility exception applies when ‘resort to the administrative process would be futile because it is clear what the agency’s decision would be.’ ” (*Id.* at p. 1350.) Second, an

⁶ The parties agree that section 2307, subdivision (b) poses no bar to Giri’s action.

administrative remedy is inadequate, and need not be exhausted, if (a) it fails to satisfy the standards of due process, and/or (b) if the remedy itself is the source of the alleged injury. (*Id.* at p. 1351.)

C. *Analysis*

1. *The Merits*

On appeal, Giri argues the trial court erred by dismissing his action because he “is not required to exhaust his available remedy by filing a petition for reinstatement with the . . . Board,” as the “inadequacy and futility” of that procedure “were properly alleged in the [c]omplaint.”

Regarding inadequacy, Giri contends: (a) his “right to petition for reinstatement is inhibited by the fact that he still has to register as a sex offender,” which registration triggers section 2232’s automatic revocation provision; and (b) the Board’s “procedures for a petition for reinstatement, in conjunction with the applicable statutes, are also the source of Giri’s injury.”

Regarding futility, Giri contends the Board “would deny” any petition for reinstatement because section 2232—especially when properly understood in light of the legislative intent behind the law⁷—“does not provide a process for him to petition for a hearing to present rehabilitative evidence and the . . . Board is required to revoke his license.” Accordingly, Giri maintains that even though section 2307 “does not explicitly prohibit [him] from submitting a petition for reinstatement,” “as a practical matter, his license will be immediately revoked even if the . . . Board accepts evidence of his rehabilitation.”

⁷ Giri contends that legislative history indicates the Legislature intended that medical doctors whose licenses are revoked after January 1, 2005, because they were required to register as a sex offender, would *never* be able to petition for reinstatement.

The People argue that Giri's inadequacy and futility arguments are "speculative," as "section 2232 does not prohibit a petition for reinstatement," and section 2307 does not prohibit a sex offender registrant "from bringing his petition and proving his rehabilitation."

We agree with the People.

While we must assume the truth of factual allegations in a complaint, we will not assume the truth of a complaint's *legal* contentions. Rather, "any allegations that are contrary to the law or to a fact of which judicial notice may be taken will be treated as a nullity." (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1102.) Here, even if Giri "properly alleged" inadequacy and futility of the section 2307 reinstatement procedure, those allegations were "contrary to the law" and therefore were nullities.

Giri's contention—that any effort by him to pursue reinstatement under section 2307 would be inadequate and futile—if successful, would eviscerate the doctrine of administrative exhaustion. (See *Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1130 ["'exhaustion would be a dead doctrine' " if a plaintiff's "'own speculative, subjective feelings about the matter . . . allow[ed] him to unilaterally ignore avenues of review' "].) This is so, because before the *courts* consider Giri's speculative interpretation of the interplay of sections 2232 and 2307, the *Board* must have an opportunity to consider the question, and resolve whatever tensions may exist between the two provisions. (See *Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 ["Because the issue had never been presented to the [administrative board], its probable decision could not be forecast"; and courts should take care not to "dilute the . . . power" of an administrative board to make or change its own rules and regulations]; § 2018 [the Board may adopt and amend necessary regulations].)

As the trial court ruled, it is "not a foregone conclusion" that the Board would deny a section 2307 petition for reinstatement by Giri. This is so because section 2232's mandate of an "automatic[] revo[cation]" of the medical license of any person who "has

been required to register as a sex offender pursuant to the provisions of [s]ection 290 of the Penal Code,” does not, on its face, necessarily foreclose *reinstatement* pursuant to section 2307. And because there is no foregone conclusion, judicial intervention in this administrative dispute is *not* “absolutely necessary.”⁸ (*AIDS Healthcare, supra*, 241 Cal.App.4th at p. 1337.) Therefore, Giri must exhaust his available administrative remedy before he seeks judicial intervention.⁹

2. *Leave to Amend*

Giri argues that “[i]f the [c]omplaint was unclear or can be supplemented with additional facts demonstrating the inadequacy or futility of the available remedy,” he should be allowed to amend it. This argument is conditional and does not carry Giri’s burden to “ ‘show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ ” (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 432.) Accordingly, we conclude the trial court did not abuse its discretion by sustaining the Board’s demurrer without leave to amend.

⁸ Further, the 2014 settlement between the parties contemplated that Giri might “file[] an application for relicensure or reinstatement.” In light of that agreement, it is plausible the Board might conclude that whatever tensions exist between sections 2307 and 2232 in theory, those tensions do not present an insurmountable hurdle to reinstatement in *this* case. (Cf. *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 690 [The futility exception is “ ‘very narrow’ ” and is inapplicable unless a party “ ‘ “ ‘can positively state that the [administrative body] has declared *what its ruling will be in a particular case*’ ” ’ ”]; *Frankel, supra*, 46 Cal.App.4th at p. 544 [settlements of licensing disputes that do not include conditions that violate public policy are administratively efficient]; *Cellphone Termination Fee Cases* (2011) 193 Cal.App.4th 298, 312, fn. 13 [generally, “ ‘an agency’s interpretation of statutes within its administrative jurisdiction is given presumptive value as a consequence of the agency’s special familiarity and presumed expertise with satellite legal and regulatory issues’ ”].)

⁹ Given this conclusion, we need not and will not address the trial court’s ripeness ruling.

III. DISPOSITION

The judgment is affirmed. The Board shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

DUARTE, J.